

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-2072

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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FRANCIS BLOETH, :

Plaintiff-Appellant, :

-against- :

No. 75-2072

R.J. HENDERSON, Superintendent of Auburn :
Correctional Facility, et al., :

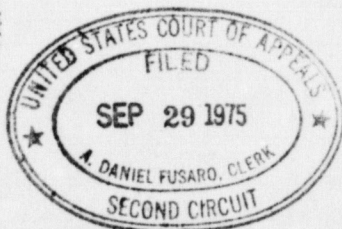
Defendants-Appellees. :

----- -x

B
p/s

APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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* At the time the Appendix was prepared, the Clerk of the Court of Appeals was unable to provide appellant's counsel with the record, and thus the Appendix does not contain a copy of the docket entries, judgment, or notice of appeal.

(C O P Y)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----- x
FRANCIS BLOETH,

Plaintiff,

-v-

VERIFIED COMPLAINT

R. J. HENDERSON, as Superintendent of
Auburn Correctional Facility;
E. REYNOLDS, as the official conducting
Superintendent's Proceedings at Auburn
Correctional Facility;
Lt. NORRIS, as Adjustment Committee
Official at Auburn;
ONE UNKNOWN OFFICIAL, who prepared charges
against plaintiff;
and each defendant individually;

Defendants.
----- x

STATE OF NEW YORK:

:ss.:

COUNTY OF CAYUGA :

Francis Bloeth being duly sworn deposes and says:

1. Jurisdiction to hear and determine this complaint is founded on Title 28 U.S.C. Section 1343 et seq., and Title 42 U.S.C. sections 1981-1983.
2. Plaintiff herein was and is a citizen of the United States and does submit this verified complaint in support of his Motion for a Temporary Restraining Order; Preliminary Injunction and other relief.
3. R.J. Henderson was and is Superintendent at Auburn Correctional Facility.
4. E. Reynolds was and is Ass't. Deputy Superintendent of Auburn Correctional Facility designated to preside over Superintendent's disciplinary proceedings.
5. Lt. Norris was and is an official of Auburn Correctional Facility designated to preside over Adjustment Committee proceedings.
6. One Unknown Official is the individual who prepared formal charges against plaintiff.

POINT ONE

7. On September 23, 1974 between the hours of 11:00 A.M. and noon plaintiff was informed he was "P.K'd" (keeplock) for investigation. No explanation or reason for such action was given.
8. On September 23, 1974, between the hours of Noon and 1:00 P.M. Sgt. Malone and two officers escorted plaintiff from his cell (D-3/15) to

9. On September 25, 1974, plaintiff was brought before the Adjustment Committee where Mr. Norris informed him that he was guilty of unauthorized use of institutional stationery; had attempted to defraud a United States District Judge by passing himself off as an attorney.

10. Plaintiff acknowledged typing the letter in question in his capacity as a legal advisor working in the facility law library, advising and assisting inmates with legal problems. He denied any attempt to defraud or infer that he was an attorney.

11. Plaintiff noted that all of his outgoing legal mail had

a) his name and prison number on the upper left hand corner of the envelope; b) his N.Y.S.I.I.S. - Criminal identification file number on the lower left hand corner of the envelope; c) enclosed in the envelope an explanation by the defendant Superintendent that plaintiff was an inmate of this facility.

12. On September 25, 1974, plaintiff wrote to defendant Henderson requesting permission to participate in certain religious services he had been attending on Saturday and Sunday and to continue participation in certain Educational programs he had enrolled in. (see exhibit I)

13. On September 26, 1974, defendant Henderson denied all requests put forth as stated in 12 above as a disciplinary action (sanction). (see exhibit II)

14. On September 27, 1974, Sgt. LaLonde served plaintiff, after reading it aloud, with a copy of the formal charge. (exhibit III)

15. Plaintiff noted that on said charge it was stated that Sgt. LaLonde "has been designated to furnish assistance" to plaintiff.

Upon noting, this, plaintiff explained that he had not attempted to deceive anyone in writing such letter for another inmate but believed it was part of his job. Sgt. LaLonde wrote something on a sheet of paper, refused to give any advice to plaintiff, and acknowledged his "assistance" was merely to read the charges, get a statement and leave, which he then did.

16. On October 1, 1974, plaintiff appeared before defendant Reynolds at a Superintendent's proceeding. Plaintiff explained he only meant to assist another inmate with a legal issue and intended no subversive or illegal act to be inferred. He was then sentenced to 30 days in segregation and told he had caused the Superintendent to be embarrassed.

17. Severe restrictions have been imposed upon plaintiff even though the letter contained no threat or any type, caused no disruption of Facility programs but sought only a sincere plea for leniency on behalf

of another inmate.

18. Plaintiff has been judged by the defendants herein as being guilty until proven innocent in violation of the Fourteenth Amendment.

If not restrained or enjoined by this Court, the illegal and unconstitutional actions of the defendants as alleged above will continue to cause great and irreparable harm to plaintiff in that he will be restricted from enjoying the privilege of the general population and socializing with his peers.

POINT TWO

19. Plaintiff was denied his constitutional right to attend Quaker Religious Services which were conducted on Saturday, September 28, 1974. He attended several services and expressed a serious interest in such religion. The denial to participate was arbitrary and as punishment. (see exhibit II)

20. Plaintiff was denied his constitutional right to attend Christian Science Services, which were conducted on September 27, 1974. He has attended several services and expressed a serious interest in such religion. The denial was arbitrary and as punishment. (see exhibit II)

21. Plaintiff is being denied his Constitutional right to attend Religious Services, as he has been doing, on Saturday and Sunday, in violation of the First Amendment.

If not restrained and enjoined by this Court, the illegal and unconstitutional actions of defendants alleged above will continue causing great and irreparable harm in that plaintiff will continue being deprived of his right to attend religious services of his choice.

POINT THREE

22. Plaintiff does not challenge the constitutionality of the Rules and Regulations of the New York Department of Correction, he only seeks to enjoin Auburn Facility Officials from their unconstitutional application of such Rules and Regulations. The procedure here is at odds with due process.

23. Plaintiff is being deprived of a steady source of income necessary to purchase commissary items by preventing him from earning \$1.15 a day working in the Law Library.

If not restrained and enjoined by this Court, the illegal and unconstitutional actions of defendants as alleged above will continue causing great and irreparable harm to that plaintiff in that he is being deprived of productive and rehabilitative work in the Law Library.

24. Plaintiff is presently enrolled in two College Courses and an awareness course 'Guide to Better Living' being conducted at the Facility school.

25. Defendant Henderson has refused to allow plaintiff to attend any of these educational and rehabilitative courses by deeming them available to plaintiff only if he is not confined in segregation.

All citizens are entitled to and have a right to secure an education. Arbitrary denials are in conflict with the Fourteenth Amendment.

If not restrained or enjoined by this Court the illegal and unconstitutional actions of defendant Henderson as alleged above will continue to cause great and irreparable harm by depriving plaintiff of his right to secure an education necessary to further his goal of securing parole as an educated and enlightened citizen.

POINT FOUR

26. Between September 28, and September 29, 1974, plaintiff was confined to his cell 24 hours each day in segregation.

27. Beginning with September 29, 1974, plaintiff was permitted to exit from his cell for one hour each day in an enclosed area in front of his cell.

28. At no time while in segregation has plaintiff been permitted to have any type of outdoor exercise. All exercise is within the enclosed cell block.

29. Plaintiff has no adequate remedy at law in state court.

WHEREFORE, plaintiff prays that this court adjudge and declare the actions of defendants herein were and are unconstitutional; preliminarily and permanently enjoin defendants, their officers, agents, employees, and all others acting in concert with them from obstructing plaintiff in his religious worship, educational pursuit, law library employment, socializing with the general population and utilizing unconstitutional disciplinary methods to deprive plaintiff of his civil rights and for such other and further relief as to this court may be just and proper.

/s/ Francis Bloeth
Plaintiff

STATE OF NEW YORK:
:ss.:
COUNTY OF CAYUGA :

Francis Bloeth, being duly sworn, deposes and says that he has read the foregoing verified complaint and knows the contents thereof,

and that the same is true of his own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

/s/ Francis Bloeth
Plaintiff

Sworn to before me this 3 day
of October, 1974

/s/ Elaine A. Graves
Notary Public

(SEAL)

EXHIBIT I

TO: R. J. HENDERSON, (Superintendent)

FROM: F. FLOETH, S.H.U. C-3

September 25, 1974

Sir:

On Monday, Sept. 23, 1974, I was placed in S.H.U.-B-Block without being informed as to the reason.

On Wednesday, Sept 25, 1974, Lt. Norris at the Adjustment Committee hearing, informed me that I had made illegal use of prison stationery. I inquired as to how I was writing letters, prepared writs or briefs for inmates in an attempt to reduce their period of imprisonment as a legal advisor-which I am whenever I give legal advice-warrants placement in S.H.U.

I did nothing subversive, did not constitute a threat to the facility inmates, officers or myself, nor did I slander or lie about anything I wrote. I mailed the letter in accordance with the rules and regulations governing such material. There is no security concerning incarceration involved. Yet, due to the seeming paranoia concerning me, I am being deprived of

1. Participation in the College Courses in which I enrolled seeking to elevate myself and thus earn parole.
2. Participation in the Christian Science and Quaker Religious Services. I am deeply interested in.
3. A clear and concise statement as to how my legal advice endangered this place, etc., that necessitates segregation.

Personally, I am of the opinion that I was doing excellent with the program that I was in. Maybe there are some forces I am unaware of that seek to hinder my Religious and Scholastic Education. I guess, like Richard Nixon, I made an error in judgement.

Please reply for my own peace of mind.

Thank you.

/s/ Frank Floeth
Frank Floeth 85067

EXHIBIT II

September 26, 1974

To: Frank Bloeth #65067

From: Robert Jenderson J. Superintendent /s/

Subject: Your note of September 15th, 1974

As I am sure Lt. Norris informed you when you appeared before the Adjustment Committee, you are charged with illegal use of official institution stationery and failing to identify yourself as an inmate in a communication you sent to a judge on behalf of another inmate. This to the extent that you gave the impression you were an official of this institution.

I am sure that you are aware that unofficial use of official stationery in this connection, which involved misrepresentation, is a serious matter. We are investigating to determine if there are any other similar cases in which you may have been involved. The participation in programs within the facility is based on appropriate conduct by inmates and I am sure you realize that the incurring of disciplinary sanction may affect your program status.

I cannot believe that an individual as well informed and as intelligent as yourself would be ignorant of the implications of our actions in this case.

jr

EXHIBIT III

AUBURN CORRECTIONAL FACILITY
SUPERINTENDENT'S PROCEEDING
FORMAL CHARGE

TO: BLOETH, FRANK

NO. 65067

CFIL- S.H.U.

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on a later date before Ass't. Dept. Supr. E. Reynolds, for the following misbehavior:

On 9/23/74 - Unauthorized use of institutional stationary.

You are hereby charged with committing the acts set forth above.

You ^{may} make any statements you wish on your own behalf and no statements made by you may be used against you over your objections in any criminal proceedings which may be brought against you..

You may wish to remain silent. If you remain silent, no inference against you may be drawn by the fact that you choose to remain silent. Any charges against you must be supported by substantial evidence.

You are further notified that Sgt. LaBonde has been designated to furnish assistance to you in this matter.

/s/ (illegible signature)
signature of person preparing
charge

None
Title

9/27/74
Date

(COPY)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
FRANCIS FLOETH,

Plaintiff,

-v-

P. J. HENDERSON, individually and as
Superintendent of Auburn Correctional
Facility (A.C.F.),

E. REYNOLDS, individually and as the
Official conducting Superintendent's
Proceedings at A.C.F.,

Lt. NORRIS, individually and as
Adjustment Committee official of ACF:

ONE UNKNOWN OFFICIAL, individually and as:
the person who prepared charges
against plaintiff,

Defendant.
-----X

SUPPLEMENT TO
ORIGINAL COMPLAINT

74 Civ. _____

STATE OF NEW YORK:

:ss.:

COUNTY OF CAYUGA :

Francis Floeth being duly sworn deposes and says:

- A. He files this supplemental complaint as a part of the complaint submitted to this Court on or about October 4, 1974 and, as no summons have been issued pursuant to Rule 4a of the Civil Procedure, he asks that this be a part of and incorporated into the complaint now under review.
- B. On October 24, 1974, plaintiff was called to the Adjustment Committee. Plaintiff asked Lt. Norris why he was being detained in segregation beyond the 30 day period he had been sentenced to by the Superintendent's proceeding. see paragraph 16 of original complaint.
- C. Lt. Norris stated that petitioner should never be returned to the general population and would remain in administrative segregation indefinitely and have a weekly review.
- D. Plaintiff requested information as to what Rule, Regulation or infraction caused the Committee to summarily re-sentence him to additional punishment.
- F. Lt. Norris informed plaintiff that
1. No reason was necessary for placement in segregation;

2. Plaintiff was in prison long enough to know that such proceedings did not necessitate due process;
3. Plaintiff should "write a writ" if he didn't like it.

F. The Rules and Regulations of New York Correctional Services state that punishment was not the function of the Adjustment Committee (7 N.Y.C.P.R. 252.5(a)(b)) and the action of said committee is in violation of the Law, Constitution of the United States and the Civil Rights of plaintiff.

G. Plaintiff has not been permitted to participate in any Religious Services (paragraphs 19, 20 or original); work in the law library assisting indigent inmates (paragraph 23) and earn a salary; continue his college education program (paragraph 25) nor socialize with his peers in the general population in direct violation of the United States Constitution. (see Holff v. McDonnell, ___ U.S. ___, 94 S.Ct. 2963)

H. Plaintiff is unconstitutionally being kept in administrative-punitive-segregation without having been afforded Due process.

I. Except in extraordinary circumstances not present here, the Due Process and Equal Protection Clauses of the United States Constitution prohibit the imposition of punishment or the denial of privileges without a hearing at which a rational determination of the facts, based upon advance notice of the charges and an opportunity to explain, can be made. None of those requirements were met here.

WHEREFORE, plaintiff prays that this Court

1. Permit this supplemental complaint be included as part of the original due to no summons having been issued nor any answer called for thus far;
2. Issue the temporary Restraining Order prayed for in the original complaint without further delay to prevent continued violations of plaintiff's rights to Due Process and Equal Protection;
3. Enter judgment against defendants jointly and severally for compensatory damages consisting of \$25.00 a day for each

day of unconstitutional confinement;

4. Enter judgment against defendants jointly and severally for punitive damages consisting of \$10.00 a day for each day of unconstitutional confinement;
5. Enter judgments against defendants jointly and severally for compensatory damages consisting of \$1.15 a day for lost wages for each day of unconstitutional confinement;
6. Grant such other and further relief as to the Court may deem just and equitable.

/s/ Francis Eloeth
Plaintiff, pro se

STATE OF NEW YORK:
 :ss.:
COUNTY OF CAYUGA :

Francis Eloeth being duly sworn deposes and says that he is the complainant herein, has read the foregoing and knows the contents thereof, that the same is true to his own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

/s/ Francis Eloeth

Sworn to before me this 29
day of October, 1974

/s/ Elaine A. Graves
Notary Public

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#4
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

74-8432

74-8432

FRANCIS BLOETH,

Plaintiff,

-v-

R. J. HENDERSON, as Superintendent of
Auburn Correctional Facility;
E. REYNOLDS, as the Official conducting
Superintendent's Proceedings at Auburn;
LT. NORRIS, as Adjustment Committee
Official at Auburn,
ONE UNKNOWN OFFICER, who prepared charges
against plaintiff,

74-CV-

74-CV- 271

Defendants.

EDMUND PORT, Judge

Memorandum-Decision and Order

The Clerk of the court has sent to me for my consideration a civil rights complaint together with an affidavit in forma pauperis from a state inmate presently confined in the Auburn Correctional Facility, Auburn, New York. The plaintiff has also sent to the court directly a supplement to the complaint, said supplement being sworn to October 29, 1974.

Plaintiff alleges that on October 1, 1974, he was sentenced in an Institutional disciplinary hearing to 30 days in segregation; plaintiff claims this sentence was unconstitutional and has deprived him of the privileges he was enjoying while in general population. The supplement of October 29, 1974, alleges that he is being held in segregation beyond the 30 day sentence he was given; this is difficult to understand as only 29 days had elapsed since the sentence was imposed on October 1, 1974.

Plaintiff has annexed to his complaint, as Exhibit II, a letter to him from Superintendent Henderson dated September 26, 1974; it is set forth in full below:

To: Frank Bloeth #65607
From: Robert Henderson J. Superintendent /S/
Subject: Your note of September 25th, 1974
As I am sure Lt. Norris informed you when you appeared before the Adjustment Committee, you are charged with illegal use of official institution stationary and failing to identify yourself as an inmate in a communication you sent to a judge on behalf of another inmate. This is to the extent that you gave the impression you were an official of this institution. I am sure that you are aware that unofficial use of official stationary in this connection, which involved misrepresentation, is a serious matter. We are investigating to determine if there are any other similar cases in which you may have been involved.

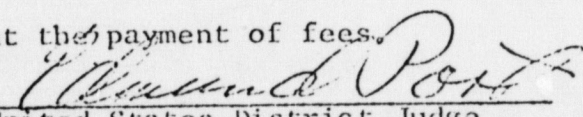
The participation in programs within the facility is based on appropriate conduct by inmates and I am sure you realize that the incurring of disciplinary sanction may affect your program status.

I cannot believe that an individual as well informed and as intelligent as yourself would be ignorant of the implications of your actions in this case.

In my opinion, the complaint proper fails to disclose any denial of plaintiff's procedural due process rights and, in addition, fails to establish any federal or constitutional violation. In connection with the claim made in the supplement,¹ the plaintiff has administrative remedies that he can and must pursue. Accordingly, the action herein will be denied and dismissed.

For the reasons herein, it is

ORDERED, that the complaint and supplement thereto herein be and the same hereby are denied and dismissed. Leave to proceed in forma pauperis is granted, and the Clerk is directed to file the papers herein without the payment of fees.


United States District Judge

Dated: November 8, 1974.
Auburn, New York.

¹ That he is being held for a longer term than he was sentenced to.

11-23
10/26/75
Tuesdays

UNITED STATES COURT OF APPEALS

Second Circuit

75-2072

○ ○ ○ ○ ○

At a Sated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the second day of May, one thousand nine hundred and seventy-five.

Francis Bloeth,

Appellant,

γ.

Robert J. Henderson, et al.,

Amelies.

A motion having been made herein by ^{James H. Smith}~~Smith~~, pro se, concerning said writ of habeas corpus, for leave to proceed in forma pauperis, further certiorari and habeas corpus was granted.

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted.

and the following:

[Handwritten signature]
U.S.D.A.